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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1940

No. 589 and No. 591

A. A. NEWHOUSE, J. R. MASON and MARY E. MORRIS, *Petitioners,* vs. CORCORAN IRRIGATION DISTRICT, *Respondent.*	No. 589
PACIFIC NATIONAL BANK OF SAN FRANCISCO (a national banking association), et al., *Petitioners,* vs. MERCED IRRIGATION DISTRICT, *Respondent.*	No. 591

PETITION FOR A REHEARING.

To the Honorable Charles Evans Hughes, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

Comes now petitioner J. R. Mason, owner of bonds of respondents, appearing in propria persona and

respectfully presents this, his petition for a rehearing of the petitions for Writs of Certiorari in the above entitled causes.

Your petitioner is a layman who views the practical economic and social consequences of the decision by this Honorable Court with very grave apprehension, for the following reasons:

There is here presented a cause involving democracy and state rights going far beyond the confines of its own facts, and far more fundamental and important than whether your petitioner loses part or all of his investment. The controversy, as petitioner sees it, directly involves both the traditional form and economy of our Government.

Under decisions by the California Supreme Court,* issued since the *Bekins* case (304 U.S. 27), respondent has been relieved of any possible excuse for seeking to scale down the property rights of petitioner. These late decisions radically alter both the legal character of

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**Provident Land Corp. v. Zumwalt*, 12 Cal. (2d) 365, 85 P. (2d) 116; *El Camino I. D. v. El Camino Land Co.*, 12 Cal. (2d) 378, 85 P. (2d) 123; *Clough v. Compton-Delevan I. D.*, 12 Cal. (2d) 385, 85 P. (2d) 126; *Moody v. Provident I. D.*, 12 Cal. (2d) 389, 85 P. (2d) 128; *Anderson-Cottonwood I. D. v. Klukkert*, 13 Cal. (2d) 191, 88 P. (2d) 685; *Glenn-Colusa I. D. v. Ohrt*, 31 Cal. App. (2d) 619, 88 P. (2d) 763; *Pac. Coast Jt. Stock Land Bank v. Roberts* (Dec. 1940), 1 Cal. Dec. 467. In *Bekins v. Heiken* (Dec. 7, 1940), 1 Cal. Dec. 258, the same court that issued *Clough v. Baber*, 38 Cal. App. (2d) 50, clarified that opinion, as follows:

> "The latest case applicable here is *Clough v. Baber* (supra). There an irrigation district was involved, and the district was admittedly insolvent. The rule is there laid down supported by a long line of well-recognized authorities that when the debtor is insolvent and there are not sufficient funds with which to pay all obligations in full, and the power to raise funds by taxation *or otherwise* has been exhausted, then equity may order the accessible money prorated among the holders of all valid claims. Such a situation, however, does not here exist. We have no showing of insolvency (and such a status cannot be assumed except upon clear proof), and the power to raise funds by taxation or otherwise has not been exhausted."

the bond contract, and the rights of petitioner, rightly believed to control when the *Bekins* case was decided.

In the light of these late decisions, and under the rule in *C. M. & St. P. & P. R. Co. v. Risty*, 276 U. S. 567, it is necessary to again pass upon the construction of the California Irrigation District Act, as now construed by the highest court of the state.

At the time of the *Bekins* case, petitioners had "the right to enforce their demands solely by an annual assessment on the lands in the district".

The above was said in *Mulcahy v. Baldwin* (1932), 216 Cal. 517, 15 P. (2d) 738 at 741.

Since the *Bekins* case, on November 28, 1938, six California opinions have determined, for the first time that a district organized under the same act as respondent, and all its properties, constitute an indestructible "public trust", and that its properties are not subject to taxation, execution or even to partition, because they all are properties "owned by the state".

But even more crucial, the California court ruled that the full rental value or "usufruct" of all land in the district, or as much of it as might be needed, is permanently a part of this Public Trust, dedicated to "the uses and purposes of the act", among which is the payment of lawfully issued bonds, and interest. (*Provident Land Corp. v. Zumwalt,* supra.)

This presents essentially the same problem for the court to pass upon, as was long before it in the recently announced opinion in *Palmer v. Connecticut Ry.,* No. 38, October Term, decided January 6, 1941,

except that no taxes need be considered in estimating the future rental value of the lands of respondent, and the tenure of respondent district as lessor, under the law is not for a mere 999 years. Surely petitioner is as entitled to "damages" for cancellation of the "lease" owned by respondent, upon which the bonds here involved constitute an equitable mortgage, as other citizens, whose property rights (not secured by the power of taxation) are being guarded?

Under these late cases, supra, should the land prove to be without sufficient rental value to meet all costs of operation and also pay the bonds, petitioner's presented bonds would simply never be paid, and he has no cause of action to sue to compel their payment. (*Moody v. Provident,* supra.)

Under still later cases (*Anderson-Cottonwood Irrigation District v. Klukkert,* 13 Cal. (2d) 191, 88 P. (2d) 685; *Glenn-Colusa Irrigation District v. Ohrt,* 31 Cal. App. (2d) 619, 88 P. (2d) 763) it was held that because the land and all property, including grain owned or held by a district under the same act as respondent, is property "owned by the state" and impressed with a public trust, it is free and exempt from taxation.

Thus, respondent now has the power and the duty to demand and collect as much of the rental value of all taxable land within its boundaries as it needs to meet its operating expenses, and pay its lawful debts when, as and if due, and funds are available, without any liability for taxes on any of its properties, or risk of execution by any creditor.

Had the highest state court ruled that the lien for general taxes on properties of respondent was senior to the lien of respondent, this court would be, under present rules, wholly lacking in power to impair or destroy the lien for general taxes *for the* benefit of respondent. (*In re Penn. Brewing Co.,* 114 F. (2d) 1010. Petition for Certiorari No. 639 filed December 20, 1940.)

Hence, neither respondent nor petitioner is or can be "caught in a vise from which it is impossible to let them out", as was said in the Ashton (298 U.S. 513) minority opinion.

The law provides facilities for over-extended private lenders holding mortgages and other private liens, junior to the rights of petitioner and respondent, and they ought not by means of any juridicial nicety be allowed to improve their position at the expense of respondent and petitioner.

Chapter IX clearly was never intended to go that far.

The power of Congress to tax the rental value of land, ever since the *Pollock* cases, 157 U. S. 429, 158 U. S. 601, has been subject to the rule of apportionment. Unless this rule could be annulled by and with the consent of one state, does not the rule apply equally when Congress, acting as here, under another clause, seeks to regulate state taxes on the rental value of land which land has been impressed by the state with an indestructible public trust, by untaxing it? Because, regardless of everything, it is obvious that Chapter IX would here relieve no junior creditor or

holder of land, unless the right and duty of respondent to tax that value is curbed in the same proportion as the principal and interest of the bonds are scaled down.

The basic difference between the problems of a private debtor and of respondent, is that no scale down of the property rights of petitioner can in any way increase or lessen the rental value of any land in the district. But a scale down of petitioner's bonds will unquestionably increase the "price", below which no owner will then sell land. The result of denying this petition therefore, must be to take vested rights from petitioner to enable overlapping tax units to again tax lands now owned by respondents, once respondent has parted with its title, and any surplus rental value, after assessments and taxes, would then be appropriated by persons neither legally nor in any other way entitled to it, which unearned income can and will be capitalized in "price" demanded for land by such private interests, from all home and farm seekers. In *Herring v. Modesto Irrigation District,* 95 Fed. 705, 723, is found testimony by an officer of that now rich district, given over 40 years ago, insisting the then outstanding bonds could "never" be paid. Those bonds have since all been paid, and millions more issued, which have always been met on the date due, while the "market" value of the land in that district has also greatly risen.

In *Postal Tel. Co. v. Adams,* 155 U. S. 698, is said:

> "The substance, and not the shadow, determines the validity of the exercise of the power."

Chapter IX gives the court no power to administer or control properties of respondent, and there is little or no restraint under state law to prevent respondent permitting the valuable lands it owns from falling into the grip of tax-title sharps, absentee mortgagees, and big landlords, such as have already picked up vast acreages from other "refinanced" districts. This must intensify the problem of the landless and homeless and increase the staggering burdens for relief.

> "It is an invitation of the most pronounced kind to covinous transactions, inevitably resulting in the release of property from just burdens of taxation, by a sale thereof, in form only."
>
> *City of Beatrice v. Wright,* 101 N. W. 1041.

It is petitioner's view that such rich irrigated lands be administered as the trust they are, and be made available to home seekers on long term lease direct from the district for the just rental value of the land. The court in *Provident Land Corp. v. Zumwalt,* supra, not only held that respondent can do this, but the implication seems inescapable that as long as respondent is in default, it is its duty to collect the full rent to meet its operating expenses and pay its debts as fast as it can. Obviously, under such a course, no advantage could accrue to any private interest as mere owner, collecting rent from a user of the land.

This view is supported by the unanimous opinion of this court in the *Pollock* cases holding that a tax on ground rent can not be shifted to a user.

Despite the opinion expressed by the highly respected late Justice Oliver Wendell Holmes, as pub-

lished in "Collected Legal Papers" (Harcourt, Brace & Co.) in the chapter headed "Economic Elements", at page 282, as follows:

> "Taxes, when thought out in things and results, mean an abstraction of a part of the annual PRODUCT for government purposes, and can not mean anything else. Whatever form they take in their imposition they must be borne by the CONSUMER, that is, mainly by the working-men and fighting-men of the community. It is well that they should have this fact brought home to them, and not too much disguised by the form in which taxes are imposed." (Emphasis ours.)

it appears that this court did not at all agree with that view in the *Pollock* cases, supra, nor does petitioner know of any economist who still even suggests that a tax on the rental value of land can be added to the cost of production, or be shifted to a tenant or to the consumer. (See Principles of Political Economy, Book 5, Ch. III, Sec. 2, by John Stuart Mill; Wealth of Nations, Book V, Ch. 2, Part 2, Art. 7, by Adam Smith; Social Statics (1851), Chap. IX, by Herbert Spencer.)

Unless this petition is granted, the wall keeping speculators away from the many thousands of acres of rich, irrigated land now owned by these and similar districts in this state, will be lowered and the lands will not be administered under the control of this court nor the effective regulation and control of the state itself, as petitioner contends the state can and should do, if the land is to be accessible as sites for homes, orchards and farms for even some of the vast army of landless, homeless and all but destitute families.

There is no reason why these lands can not be and every reason why they should be protected and administered by the state, as the public trust they are, or else acquired by Farm Security Administration, under the Bankhead-Jones Tenant Land Purchase Act, by direct purchase from the district. But, once the composition here sought is approved by this court, this opportunity will vanish. Once these lands are bought up from respondent by mortgagees or speculators, and they get the title, the price demanded will surely be as high as other similar irrigated land is now renting and selling for, outside the taxable boundaries of the districts.

In the Hearings before a sub-committee of the Committee on Education and Labor, U. S. Senate, 76th Congress, 3rd Session, pursuant to S. Res. 266, under "California Agricultural Background" Exhibit 9587, at page 22778, in "Selected large scale farming enterprises in California", Part IV relates to lands held by California Lands, Inc., a subsidiary of Transamerica Corporation, it is reported that the rental value of alfalfa land is $15-$20 a year, per acre, and vegetable farms rent at $15-$25 an acre. Also that 9/10ths of the lands owned by this company are tenant operated, and the great majority are not former owners.

The Governor's Commission on Re-employment (Calif.) in Chapter VII of its September 30, 1939, Report to the Governor, said:

> "Settlement and resettlement programs are largely dependent upon the availability of *low cost lands,* as well as the economical utilization of

> tax-delinquent property which has been deeded or sold to the State. * * * A conspicuous feature of agriculture in California is the large scale ownership and operation of farm land. The most casual survey reveals that thousands of families with farm experience *are unable to buy or rent land.* * * * All the problems centering in the ownership and use of land are so vital to the larger aspects of employment and living conditions of our citizens that a thorough overhauling of our land policies, including records, taxes, delinquency laws, penalties and ownership should be made."

The Constitution of California, Art. XVII, Sec. 2 reads as follows:

> "The holding of large tracts of land, uncultivated and unimproved by individuals or corporations, is against the public interest, and should be discouraged by all means not inconsistent with the rights of private property".
>
> *Fulton v. Brannan,* 88 Cal. 454.

In more than one district, operating under the same law as respondent, all former mortgages and other private liens were eliminated when the district acquired title "free of all encumbrances", as provided in Section 48 of the Act. But those districts have in no instance collapsed or even ceased their orderly operation because of that. On the contrary, the duty imposed on the district under the law works to free the land from junior and uneconomic private debts, which obviously never could have been paid, unless the assessments and taxes as lawfully due could also be paid. Such lands are now accessible to home seekers,

with whom the district has the same rights to make leases as any private interest has to lease land it owns. (Sec. 47 of the act.)

It is held to be not only the right, but the duty of a county to keep land on its paying tax rolls, and to settle the liens of any other tax unit, which stand in the county's way. (*County of San Diego v. Hammond,* 6 Cal. (2d) 709, 728.) Hence it is clear, that if respondent requires relief, the legislature has provided a method for it to be had from the county. The court may take notice that more than one county in California has issued and sold county bonds to refund bonds of districts, within the county, and which were not issued as county obligations.

From earliest recorded history men have struggled and fought wars for the right to collect rent from irrigated lands. But, under our Constitution this court long ago ruled that if taxes equalled the full rental value of land, even that would involve no impairment of the obligation of contract. (*Providence Bank v. Billings,* 4 Peters 939 at 956 by Chief Justice Marshall.)

Mr. Justice Miller in *Cheatham v. Norvekl,* 92 U. S. 561 said:

> "If there existed in the courts, state or national, any general power of impeding or controlling the collection of taxes, or relieving the hardship incident to taxation, the very existence of the government might be placed in the hands of a hostile judiciary."

Congress deleted the words "Political Subdivision" and added a separability clause in its amendment to

the original Chapter IX. Also the omission from the amended act of any provision for state consent, was undoubtedly because in the *Ashton* case it was said: "Neither consent nor submission by the States can enlarge the powers of Congress * * *"

Had the decision of the court under the original Chapter IX been favorable to respondent, Merced Irrigation District, as it was for the Chicot Co. Dr. District, instead of the opposite, there is no question but that under the rule announced in *Chicot Co. Dr. Dist. v. Baxter State Bank,* 308 U. S. 371, the bonds held by petitioner would be considered by respondent as void and valueless today. Perhaps because your petitioner is not a member of the bar, rulings that seem contradictory to him, are not so, in law, and for reasons utterly beyond his comprehension.

Petitioner noted with real hope the following statement in the majority opinion, written by Mr. Justice Frankfurter, January 6, 1941:

> "A State's interest in the conservation and exploitation of a primary natural resource is not to be achieved through assumption by the Federal courts of powers plainly outside their province and no less plainly beyond their special competence."
>
> *Railroad Comm. of Texas v. Rowan and Nichols Oil Co.,* No. 218, Oct. Term 1940. Decided Jan. 6, 1941.

THE IMPORTANCE OF THE ISSUE.

The legislative and administrative policy of our government and courts, has always been to uphold,

preserve and protect the borrowing and such taxing powers essential to the existence of the state, as the state has delegated to these respondents, inviolate from any interference whatever by the Congress. This is not the first time that states and local governments have gotten into financial difficulties. Had it not been that the courts, and particularly this court set faces of flint against all attempts and schemes to get out of paying, local government self-support and credit would have been weakened, if not destroyed.

With the much heavier tax burdens now facing the people, plus the still heavy mortgage and private debts, it is petitioner's conviction that an enlargement of the bankruptcy power to include the taxing and borrowing power of the states, must prove more an aggravation than a cure, retarding recovery, increasing the danger of inflation and the cost of National Defense.

Because this court so vigorously overruled the argument no doubt seriously advanced by Mr. Geo. H. Maxwell as counsel in the historic *Fallbrook Irr. Dist. v. Bradley,* 164 U. S. 112 case, "It [the act] is communism and confiscation under guise of law"; virtually all the irrigation systems both large and small have since been built in California under this law, with money borrowed from Savings Banks, Insurance Companies, Trustees, etc., through voting and issuing bonds similar to those held by petitioner.

Despite this Fallbrook ruling, which came down after long and piercing argument between the then leading lights in municipal law, including Judge Dillon, and Mr. Choate, the opposition has never ceased in its attempts to get the basic points of law, there settled,

modified or reversed. The proof that this is true, can be found in the almost continuous litigation that has occurred involving this law, and the similar acts of neighboring states, all of which were patterned largely upon the parent California statute. The list of cases is far too long to even attempt to cite, here. Suffice to say, the act has been sustained against every attack, heretofore, and has incalculably benefited the common good and maintained social justice, with equal opportunity for homes and a competence for all willing to work and contribute equitably for the common good. It has, admittedly proven costly and disappointing to those absentees and landlords who had bought up land for speculation.

The area irrigated and irrigable within the 100 California districts is about 4,000,000 acres, which is substantially larger than the acreage served in all the Federal Reclamation Projects in the 17 western states, combined. The market value of the land in these California districts, prior to the depression was officially estimated at more than $1,000,000,000., while the total amount of bonds issued never reached 10% of that figure. This record constitutes a saga of democratic and vital self-government, which because of the power and duty to tax land values has never asked nor received in over 50 years, one dollar of subsidy from any other public treasury.

The court may take judicial notice, at this point, that since 1933 the Legislature of California, has "relieved" local school and road districts, which together with their bond holders were facing difficulties equal if not greater than those of respondents and your

petitioner, by the enactment of sales taxes and gas taxes, allotting sufficient amounts thereof back to those local districts to make up any deficit. Obviously this has operated to lessen the tax on land values, which those districts, lacking such allotments from the state, would have had to levy and collect. The state, in turn, during the same years has gotten more and more money from the Congress, all of which has tended to shift the costs of government from land holders, as such, on to the backs of labor and capital. Petitioner views with alarm, this trend.

SUMMARIZING.

The bonds of your petitioner, which are about to die, are not merely secured like general obligation county and city bonds, but under decisions of the California Supreme Court, given after the *Bekins* case, and after the majority of original bondholders parted with all rights, at a price they believed they had to accept, under threats of "bankruptcy", or other reasons, it was ruled that respondents and all their property is "owned by the State", and is indestructibly dedicated to a "Public Trust", including the full rental value of all land, present and future, until every bond is paid, regardless of how long that may take.

At the time respondents executed the bond contract with petitioner, there was nothing in the law permitting the State to "consent" with any authority to repudiate or destroy this Public Trust.

The bonds are wholly exempt from Federal Income Tax. (72 Op. A. G. 38, Feb. 4, 1937.) They are not

callable prior to maturity at any figure, and promise payment in gold coin. Unlike corporate bonds, they possess no acceleration or foreclosure clause.

The bonds of respondents were issued under supervision and control of the California Districts Securities Commission, composed of the Attorney General, Superintendent of Banks and State Engineer, and pursuant to their approval, are endorsed by the State Controller, evidenced by an unqualified certificate impressed on each bond.

The bonds held by petitioner in this case are so certified and are still a lawful investment for savings banks, insurance companies, trustees and for any funds that may be invested in this state in the bonds of any state, county or city. They are also eligible to secure deposits of public funds.

It is not clear what will be the effect on this certification of the bonds, should this petition not be granted.

In no way does one bond constitute a lien on respondent's property, ahead of the others, except as due and presented for payment.

The Congress authorized the R.F.C. to loan money to respondent when a majority of the original creditors were willing to accept the scale down figure set by the R.F.C. Congress did not make it a requisite that consent be unanimous, for it was known that some would not need or wish to sell. Surely had even all the holders, save petitioner, elected to give their bonds away, petitioner would not be bound by such action alone, whether under the bankruptcy or

any other clause. He is not only willing but is in full support of any orderly course that will uphold the rights of every other bond holder, in strict fulfillment of the contract each holds. It is a fundamental principle of bankruptcy that "equality between creditors is necessarily the ultimate aim of the bankruptcy law, and to obtain it we must regard the essential nature of transactions, not their forms".

Clarke v. Rogers, 228 U. S. 533, 57 L. ed. 953.

In his essay on Liberty, John Stuart Mill contributed one of the noblest interpretations of democracy ever written.

Denying "the right of the people to exercise coercion, either by themselves or by their government", he declares that the protection of minority opinion and rights is the only safe and true basis for a free people. "If all mankind minus one were of one opinion", says Mill in a famous passage, "and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind. * * * All silencing (of opinion)", he continues, "is an assumption of infallibility" and therefore a blow at the very heart of democracy.

Petitioner seeks no advantage, and has the utmost confidence that this Honorable Court will not be a party to the denial of minority rights, here present.

Respondents, whether with or without the connivance of mortgagees and the state, should not now be permitted to permanently impair if not wreck the vitality

and effectiveness of this venerable law, with such a record of achievement for the common good behind it, and with so much that can and still needs to be done under it, in the future.

No question is here raised over the constitutionality of the amended Chapter IX. But, in the light of the "Public Trust" created in late decisions by the highest State court, after the *Bekins* case and discussed supra and in briefs of other petitioners in this and related petitions recently submitted, it is certain that if there is any kind of governmental instrumentality, political subdivision or taxing authority of a state, whose tax-secured bonds are immune and exempt from the application of this act under the separability clause, the bonds of petitioner are also entitled to immunity.

The national importance of the cause plus the new necessity for statutory construction and clarification, clearly justify this earnest appeal for a review, and prayer that Writs of Certiorari issue out of and under the seal of this Honorable Court, as prayed for in the petitions for Writ of Certiorari herein.

Dated, San Francisco, California,
January 24, 1941.

Respectfully submitted,
J. R. MASON,
In Propria Persona.

CERTIFICATE OF PETITIONER.

I hereby declare that the foregoing Petition for a Rehearing is submitted in good faith and is not interposed for delay.

Dated, San Francisco, California,
January 24, 1941.

J. R. MASON,
In Propria Persona.